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March 16, 1994

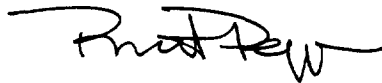
UNITED STATES GOVERNMENT MEMORANDUM

TO: Acting Secretary

FROM: Chief, Office of Plans and Policy

RE: Attached Ex Parte Presentation in PP Docket No. 93-253

Attached are two copies of a written ex parte presentation in PP Docket No. 93-253 by Eon Corporation. The presentation was made pursuant to Section 1.1204(b)(7) of the Commission's Rules. Please associate the attached copies of the presentation with PP Docket No. 93-253.



Robert M. Pepper
Chief, Office of Plans and Policy

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William F. Caton
Acting Secretary
Federal Communications Commission
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Room 222
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

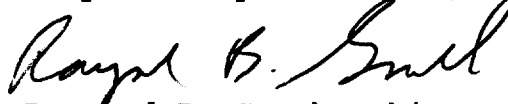
Re: PP Docket No. 93-253: Competitive Bidding

Dear Mr. Caton:

Pursuant to Section 1.1206(a)(2) of the Commission's rules, this letter serves as notice of an ex-parte communication in the above-referenced proceeding. Today, on behalf of EON Corporation, the attached letter was delivered to Karen Brinkmann of Chairman Hundt's office, and to Robert Pepper, Chief of the Office of Plans and Policy. The letter discusses the likelihood that the principal use of spectrum allocated to the Interactive Video and Data Service ("IVDS") would be for subscriber-compensated services.

Please contact the undersigned if there are any questions regarding this matter.

Respectfully submitted,



Raymond B. Grochowski
of LATHAM & WATKINS

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

March 15, 1994

Mr. Robert M. Pepper
Chief, Office of Plans & Policy
Ms. Karen Brinkmann, Esq.
Special Assistant to the Chairman
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: PP Docket No. 93-253: Competitive Bidding

Dear Mr. Pepper and Ms. Brinkman:

On behalf of EON Corporation ("EON"), we are writing to provide further support in the record for the fact that the services to be offered as part of the new Interactive Video and Data Service ("IVDS") will include a substantial amount of services that are to be compensated by the subscribers.

Some of the comments and replies submitted to this docket have opposed licensing the Interactive Video and Data Service ("IVDS") through auction, on the stated assumption that the principal use of IVDS spectrum will not be for subscriber-compensated services.¹ In addition, the IVDS Band B tentative selectee for San Francisco included an exhibit in his 574 filing which states a tentative intention to derive all revenues from non-consumer sources, adding that he would impose consumer subscription charges only if his assessment of the economics changes. Because IVDS has yet to be offered to the public, there is no historical evidence on which to base such an assumption. However, in view of the types of IVDS services currently planned, and of the anticipated nature of the future market for IVDS, it is likely that the principal use of IVDS spectrum will involve

¹ See, e.g., Comments of Richard L. Vega Group, at 11-14; Comments of Independent Cellular Consultants at 3; Reply Comments of "American Group" at 23-25; Comments of Quentin L. Breen at 6. EON notes that Mr. Breen's comments are one example of several dozen submissions opposing use of auctions for IVDS, all of which contain almost identical wording. Many of these, in fact, appear to be reproduced copies of identical pages. The Commission should not accord independent weight to comments such as those of Mr. Breen and others simply because they are filed repeatedly by numerous parties with similar interests.

consumer-paid service. The Commission should therefore proceed with plans to license IVDS through competitive bidding procedures.

EON has led the way in development of IVDS technology and in analysis of the consumer market for IVDS services. EON has been involved in developing and testing its IVDS technology since 1986. Furthermore, EON led the way in establishing the IVDS industry by initiating a rulemaking in 1987 that culminated in the Commission's allocation of spectrum in the 218-219 Mhz band and adopting service rules for IVDS.²

Based on EON's years of experience in developing IVDS and in conferring with prospective IVDS programmers and advertisers, it is clear that restricting an IVDS licensee's ability to offer consumer-paid services will inhibit development of a robust consumer-oriented offering of wireless interactive services. Interactive television, whether provided via a wired or wireless connection, is scarcely in its infancy. At this time, an accurate prediction of consumer appetites and price sensitivity for interactive features and services cannot be made. What can be predicted, however, is that in order for the IVDS industry to grow and provide a valuable service to consumers, the participants involved must remain flexible and responsive to the public's demands.

Sensitivity to consumers' needs and desires for products, services, delivery media and fee arrangements, and the flexibility to be responsive to the market, are essential to full development of this new service. The Commission itself, in proposing new rules for IVDS, recognized the need "to provide as much flexibility as possible in the type of services that may be offered," and went on to note that IVDS rules should be structured so as to "permit viewers to order a multitude of services and products, including pay-per-view programming."³ The Commission also recognized the probability that IVDS services would be "offered to the public on a subscription basis."⁴

EON's experience indicates that IVDS service cannot be supported on a completely "free-to-the-consumer" basis and that no single revenue model can contain the infinite possibilities enabled by the advent of the interactive age. EON plans to offer a range of interactive services in categories including education, sports, games, entertainment and shopping. Some of these services are best provided on a per-transaction fee basis,

² See 47 C.F.R. §§ 95.801-863.

³ Interactive Video and Data Service, Notice of Proposed Rulemaking, 6 FCC Rcd. 1368, 1370 (1991).

⁴ Id.

others on a subscription fee basis, while still others may be provided free to viewers. The IVDS industry is too young to foreclose any revenue generating options.

Under a "free-to-the-consumer" model, costs of providing service are theoretically subsidized by the service provider (i.e., the television programmer, advertiser, or government). A service provider may fund the service if revenue can be generated sufficient to provide profit while covering the costs of the network infrastructure and operations. The value is derived from the consumer response. For example, a direct response advertiser with an 800 number would probably be willing to assume the cost to accept an order using IVDS facilities since that advertiser already assumes similar kinds of costs for telephone orders and receives a benefit which exceeds those costs.

Some revenue from advertisers is part of EON's IVDS model, but development of the IVDS consumer market is critical before sufficient value can be provided to advertisers. Some advertisers with whom we have spoken are willing to pay for transactions received in response to certain advertisements, such as when the viewer is providing his name and address to the advertiser for the purpose of receiving information or purchasing the advertised product. However, major advertisers indicate that they require a critical mass of IVDS-enabled households in the market before they will undertake the types of advertising campaigns required to support an IVDS network organization. Without the consumer appeal and financial support provided by consumer-paid interactive programming, sufficient penetration of the market becomes problematic.

Conversely, certain other services that currently exist, such as game shows and opinion polling, are offered as consumer-paid -- not toll-free -- interactivity. Television programmers offering telephone-based interactivity accept the concept and value of interactivity under the consumer-paid model. There is no reason to believe that the fundamental revenue flow model for wireless interactive television will dramatically differ from that of telephone-based interactivity. This view has been validated by EON in its discussions with hundreds of service providers over the past three years: meaningful interactivity must have the ability to be consumer-supported.

EON's IVDS model includes a range of revenue streams. Consumers will have access to a robust offering of interactive opportunities for which they may be charged on a subscription or "pay-per play" basis. For example, one of the innovations that EON is bringing to television is the ability to play along with televised sports events in real time. EON has licensed QB1, a football play-along game, from NTN Communications, Inc. By predicting the next play of the game, QB1 players can score points and compete against each other across the EON network. Players can purchase "season tickets" to play QB1 all season, or

they can purchase single game "tickets." This fee arrangement is typical of the EON's plan for structuring payment for a wide range of interactive services.

A provider-paid, consumer-free service would result in a commercial service largely dedicated to advertising and marketing. Under such a scenario, one might liken IVDS to one long television commercial that offers a toll-free number for use in placing orders. Although EON sees great value in making sales opportunities convenient through interactivity, that reflects only a partial service offering, devoid of enriching applications such as education programming, sports and play-along games. An interactive service that lacks such products will not appeal to consumers, and will not be able to effectively compete in the future interactive television market. IVDS licensees must have the financial flexibility to work with all provider groups, not just direct-to-home marketers.⁵

Although the concept of "free service" generates mass appeal, it is important to remember that consumers have demonstrated that they will pay for value and they will reject free opportunities without value. The goal of interactive television is to provide a value-added set of features to television viewing. It is the consumers' prerogative to decide for which of these services they will or will not pay. No one can predict exactly what those future choices may be, although it appears unlikely that they would be limited to the kinds of services that could be offered free of charge to consumers.

The manner in which IVDS revenues will be generated is an issue that should be determined in the marketplace. The interactive industry is growing to accommodate competition from cable and telephone companies as well as from wireless service providers. Any decision on the mechanism for licensing IVDS that limits or eliminates the IVDS licensee's flexibility to compete in this environment could have disastrous results for this yet unborn wireless industry. Further, it is beyond dispute that one purpose of competitive bidding procedures is to prevent lottery "speculators" from being unjustly enriched while the public is forced to wait unnecessarily for new or expanded services to be made available. While the Commission's rules governing IVDS provide construction and service milestones intended to avoid such delays, licensing IVDS through auction procedures will do more to ensure that only those entities with the both the capability and intention to construct and operate IVDS facilities

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It has been suggested that the Internet be used a vehicle for subscription-free interactive television services. To our knowledge, most public use of the Internet involves connection fees paid by consumers on a per-transaction or per-minute basis. In addition, the costs of developing and maintaining the software and interfaces required to make a viable and consumer-friendly set of IVDS applications will be significant. Therefore, even if built on an Internet foundation, IVDS would probably still require subscriber fees.

In view of the likely nature of the future IVDS industry, EON submits that the principal use of IVDS spectrum is likely to involve subscriber-compensated service. The Commission should, therefore, proceed with IVDS licensing using competitive bidding procedures. Thank you for your consideration in this matter.

Sincerely,

A handwritten signature in black ink, consisting of stylized, overlapping loops and a long horizontal stroke extending to the right.

R. Michael Sheridan
President & CEO